

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 122 of 1999

For Approval and Signature:

HON'BLE MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES
 2. To be referred to the Reporter or not? : YES
 3. Whether Their Lordships wish to see the fair copy of the judgement? : YES
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
 5. Whether it is to be circulated to the concerned Magistrate/Magistrates, Judge/Judges, Tribunal/Tribunals? : NO

HEMANTKUMAR VASHRAMBHAI PATEL

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 122 of 1999
MR IS SUPEHIA for Petitioner No. 1
ND Gohil AGP for Respondent No. 1
MR HS MUNSHAW for Respondent No. 2
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CORAM : HON'BLE MR.JUSTICE H.K.RATHOD

Date of decision: 06/09/2003

ORAL JUDGEMENT

Heard learned advocate Mr. Supehia for the

petitioner; Mr. ND Gohil, learned AGP and Mr. HS Munshaw, learned advocate for the respondents. Brief facts of the present petition are to the effect that the petitioner was serving as assistant engineer in charge of the post of the Deputy Executive Engineer at Palitana Panchayat Sub Division. According to the petitioner, by order dated 16.10.1998, about sixty persons junior to the petitioner have been promoted to the post of Deputy Executive Engineer but the petitioner has not been promoted and on inquiry, he came to know that due to the alleged pendency of departmental inquiry, he has not been promoted though he was found fit for promotion. According to the petitioner, no departmental inquiry is pending against the petitioner since no charge sheet has been issued against him. The petitioner has, therefore, approached this court with a prayer for directing the respondents to release his promotion.

According to the petitioner, when the DPC met on 23.1.1998, at that time, no departmental proceedings were pending against him. Not only that even no conscious decision was there to contemplate the inquiry against him and he was selected for the post of Deputy Executive Engineer and his name was also recommended for promotion to the higher post by the DPC on 23.1.1998. At the time of issuing rule, following order was passed by this court on 3rd March, 1999:

"Heard the learned advocates for the respective parties. Rule.

It is not disputed that the petitioner is otherwise due for promotion to the post of Deputy Executive Engineer. It is also not disputed that the petitioner has been found to be fit for such promotion by the Departmental Promotion Committee and that his selection has been approved by the Gujarat Public Service Commission. However, on account of a contemplated inquiry, the petitioner was not promoted on 16th October, 1998 when some of his juniors were so promoted. Pending this petition, the petitioner has been served with a charge sheet issued on 12th February, 1999. The imputation of charge refer to certain irregularities alleged to have been committed as far back as in the year 1991. Further, it appears to be a charge of procedural irregularity. In that view of the matter, I do not consider it expedient to deprive the petitioner of his due promotion on account of belated initiation of disciplinary action. Mr.

Dave, learned AGP has contended that the respondents shall complete the disciplinary action as expeditiously as possible. But in view of the nature of the imputation of charge made against the petitioner, it would not be expedient to promote him pending the disciplinary inquiry.

On the facts and in the circumstances of the case, by way of interim relief, the respondents are directed to promote the petitioner as Deputy Executive Engineer pursuant to his selection by the Departmental Promotion Committee. It is clarified that the said promotion shall be ad.hoc and subject to the result of this petition and the disciplinary action initiated against the petitioner. The petitioner shall not be entitled to further promotion on the basis of such ad.hoc promotion. It is further directed that the respondents shall complete the disciplinary action within a period of six months from today and the petitioner shall co-operate with the inquiry officer/disciplinary authority. In the event, the petitioner does not co-operate in the departmental inquiry, the respondents shall have liberty to move this court for vacation of the interim relief. Further, in the event the petitioner is found to be guilty and is punished for the same, this interim relief shall automatically get vacated and the petitioner shall be reverted to his substantive post of Assistant Engineer. "

It has been submitted that the aforesaid interim order made by this court has yet not been implemented as it was challenged by the respondents before the Division bench of this Court by filing LPA No. 440 of 1999. However, ultimately that appeal has been dismissed and disposed of by order dated 28th October, 1999 and, therefore, nothing remains pending against the interim order dated 3rd March, 1999. Learned AGP Mr. ND Gohil appearing for the respondent State authorities has submitted that since the interim order was challenged, it has not been implemented till this date.

Considering the undisputed facts between the parties on the basis of the averments made by the petitioner in the petition and the reply as well as the rejoinder thereto, according to my opinion, two dates are relevant for determination of the question raised in this petition as to whether the petitioner is entitled for promotion on the basis of the selection made by the DPC

on 23.1.1998 and when his name has been included in the select list or not?

It is an admitted fact that the DPC met on 23.1.1998 for promotion to the post of Deputy Executive Engineer wherein the case of the petitioner was considered by the said Committee and he was selected and his name was included in the select list. These are the undisputed facts between the parties. Subsequently, on 21st July, 1998, according to the affidavit in reply, competent authority has taken conscious decision to issue charge sheet against the petitioner. In view of these peculiar facts of the present case, the observations made by the Hon'ble apex court in the matter of Union of India versus KV Jankiraman reported in AIR 1991, SC 2010 are relevant and material considering the facts of the present case. In para 6 of the said judgment, it has been observed by the Hon'ble Apex Court as under:

"6. On the first question, viz., as to when for the purpose of the sealed cover procedure the disciplinary/criminal proceedings can be said to have commenced, the Full Bench of the Tribunal has held that it is only when a charge memo in a disciplinary proceedings or a charge sheet in a criminal prosecution is issued to the employee that it can be said that the departmental proceedings/criminal prosecution is initiated against the employee. The sealed cover procedure is to be resorted only after the charge memo/charge sheet is issued. The pendency of preliminary investigation prior to that stage will not be sufficient to enable the authorities to adopt the sealed cover procedure. We are in agreement with the tribunal on this point. The contention advanced by the learned counsel for the appellant authorities that when there are serious allegations and it takes time to collect necessary evidence to prepare and issue charge memo/charge sheet, it would not be in the interest of the purity of administration to reward the employee with a promotion, increment etc. , does not impress us. The acceptance this contention would result in injustice to the employees in many cases. As has been the experience so far, the preliminary investigations take an inordinately long time and particularly when they are initiated at the instance of interested persons, they are kept pending deliberately. Many times they never result in

the issue of any charge memo/charge sheet. If the allegations are serious and the authorities are keen in investigating them, ordinarily it would not take much time to collect the relevant evidence and finalize the charges. What is further, if the charges are that serious, the authorities have the power to suspend the employee under the relevant rules and the suspension by itself permits a resort to the sealed cover procedure. The authorities thus are not without a remedy. It was then contended on behalf of the authorities that conclusions nos. 1 and 4 of the Full Bench of the Tribunal are inconsistent with each other. Those conclusions are as follows :

- ' (1) Consideration for promotion, selection grade, crossing the efficiency bar or higher scale of pay cannot be withheld merely on the ground of pendency of a disciplinary or criminal proceedings against an official;
- (2)
- (3)
- (4) the sealed cover procedure can be resorted only after a charge memo is served on the concerned official or the charge sheet filed before the criminal court and not before.'

There is no doubt that there is a seeming contradiction between the two conclusions. But read harmoniously, and that is what the Full Bench has intended, the two conclusions can be reconciled with each other. The conclusion No. 1 should be read to mean that the promotion etc. cannot be withheld merely because some disciplinary/criminal proceedings are pending against the employee. To deny the said benefit, they must be at the relevant time pending at the stage when charge memo/charge sheet has already been issued to the employee. Thus, read, there is no inconsistency in the two conclusions.

We, therefore, repel the challenge of the appellant authorities to the said findings of the Full Bench of the Tribunal."

In view of the above observations made by the Hon'ble Apex Court and also in view of the facts of the present case which are not in dispute between the parties, the DPC met on 23.1.1998 and considered the case

of the petitioner for promotion to the higher post and the petitioner was selected and his name was also included in the select list but he was not subsequently promoted only on the ground that the conscious decision has been taken by the competent authority on 21st July, 1998, according to my opinion, this is illegal and contrary to the law laid down by the Hon'ble Apex Court and, therefore, according to my opinion, the interim order made by this court on 3rd March, 1999 directing the respondents to promote the petitioner on the post of Deputy Executive Engineer pursuant to his selection made by the DPC is required to be confirmed from the date on which it was passed by this court. Consequently, the petitioner is entitled for all the consequential benefits from the date 3rd March, 1999. It will be open for the petitioner to make appropriate detailed representation before the appropriate competent authority of the respondents in respect of the claim of salary and other benefits on the post of promotion for the period prior to 3rd March, 1999 i.e. for the period from 16.10.1998 till the date of interim order 3rd March, 1999. As and when the respondents will receive such representation from the petitioner, same shall be considered, examined and decided by the respondents in accordance with law and appropriate speaking order in accordance with law will be passed by the respondents on such representation that may be made by the petitioner.

In the result, this petition is allowed. Respondents are directed to promote the present petitioner as per the interim order of this court dated 3.3.1999 with all consequential benefits including the difference and arrears of salary for the post of promotion. Rule is made absolute in terms indicated hereinabove with no order as to costs.

Dt. 6.9.2003. (H.K. Rathod, J.)
Vyas